

STATE OF MICHIGAN
COURT OF APPEALS

CAROL GARRETT, Personal Representative of
the Estate of CAROLYN BRONSON, BETTY
KIADO, GREG ERNST, NICOLE ERNST, f/k/a
NICOLE SHANKIE, JOHN DERRY,
STEPHANIE DERRY, THOMAS KLEMZ,
CONNIE KLEMZ, GARY KLEMZ, CYNTHIA
KLEMZ, ROBERT REED, JACQUELINE REED,
JAMES KNEZEVICH, and CATHY
KNEZEVICH, f/k/a CATHY WYLIE,

Plaintiffs-Appellees,

v

DEPARTMENT OF CONSUMER & INDUSTRY
SERVICES, FRENCHTOWN CHARTER
TOWNSHIP, DETROIT EDISON COMPANY,
AMERITECH CORPORATION, DETROIT
BEACH ASSOCIATION, WILLIAM CALKINS,
CYNTHIA B. CALKINS, ROBERT CODY,
PRIME LAW OFFICES, LEON TURNBULL,
UTILICORP UNITED, INC., d/b/a MICHIGAN
GAS LINE COMPANY, CHARTER
COMMUNICATIONS, MONROE COUNTY
DRAIN COMMISSIONER, DARYL
BOUGHNER, FRENCHTOWN CHARTER
TOWNSHIP RESORT DISTRICT AUTHORITY,
MARC S. TINNEL, BOBBIE M. TINNEL,
DONNA M. BREITENBACH, HERBERT F.
GREEN, PATRICIA A. GREEN,
DAVID R. ARTHUR, RITA J. ARTHUR, JOHN
B. OUELETTE, HEATHER A. OUELETTE,
GLORIA ANN GERHARDI, DETROIT BEACH
BOAT CLUB, JOSEPH GESSNER, DOUGLAS
M. KOVENICH, TIFFANY L. KOVENICH,
TIMOTHY D. LARKINS, SHANNON R.
LARKINS, DONALD J. RORKE, SCOTT A.
SCHMIDT, KIMBERLY L. SCHMIDT,
THOMAS J. BODINE, JOHNA L. BODINE,
ROBERT C. GUBBINI, KAYE A. GUBBINI,

UNPUBLISHED
October 11, 2005

No. 254794
Monroe Circuit Court
LC No. 02-014200-CH

EDWARD DAVIS, DAVID C. WELTON,
PEGGY J. WELTON, CLARENCE R.
MCCLUNG, ANNAMARIE L. MCCLUNG,
FIRST NATIONAL ACCEPTANCE CO.,
DONALD DRUMMONDS, ROBIN
DRUMMONDS, BRENDA J. THOMAS,
JOSEPH M. NECKEL, ROBERTA J. NECKEL,
MARVIN J. TARJEFT, ELSIE TARJEFT,
DOUGLAS E. HIRST, JACQUELINE A. HIRST,
ROSE JOHNSON, BENJAMIN HOPKINS,
GERARD HOPKINS, ANTHONY HOPKINS,
THOMAS B. GIBSON, JUANITA ANN
GIBSON, BEVERLY M. NEWBY, MICHELLE
M. CONTE, RONALD J. BOMIA, LANA V.
BOMIA, JAMES BOOS, TERI A. BOOS,
DAVID W. SPAULDING, CHERYL A. REVELS,
JAMES B. VERES, DEBORAH E. VERES,
TIMOTHY C. HARTMAN, JILL A. HARTMAN,
THOMAS J. HAMAN, ROBERTA L. WITZ,
JEWEL W. FITZGERALD II, HELEN M.
FITZGERALD, EMILY Y. ROGERS, RICK N.
PILLARELLI, MARTHA J. PILLARELLI,
WILMA FEKETIA, ARNOLD SCOTT
BREDSCHEIDER, DANIEL D. BLEVINS,
DANIEL D. BLEVINS JR., MICHELLE
BLEVINS, CHARLES D. RUNYON,
CHRISTINE RUNYON, DUANE
GILDERSLEEVE, STEVEN M. JUKURI, DIANE
C. JUKURI, DONALD S. MCDANIEL, LEE R.
LEACH, JENNIFER S. LEACH, LEONARD J.
MIEKOS, KATHLEEN MIEKOS,
CHRISTOPHER C. DUVALL, CHRISTINA A.
DUVALL, ROBERT JAMES SIVIL SR.,
LEONORA SIVIL, SAM VASSALLO,
EVANGELINA VASSALLO, TODD HOWE,
ANGELA HOWE, KATHIE J. TIEGS, THOMAS
F. COX III, NEIL J. THOMPSON, and KELLY A.
THOMPSON.

Defendants,

and

JAMES C. WOFFORD,

Defendant-Appellant.

Before: Fitzgerald, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

Defendant James Wofford appeals as of right from the trial court's order granting the request of the plaintiff estate (the "estate") and the plaintiff lot owners (the "lot owners") to replat¹ Detroit Beach No. 3 by incorporating property owned by the estate and transferred to the lot owners. We affirm.

I. Factual and Procedural Background

The estate owns a parcel of waterfront property situated between the edge of Sandy Creek² and the lots owned by the plaintiff lot owners in the platted Detroit Beach No. 3. Due to the location of the estate's property, only the adjoining lot owners could make reasonable use of the land. The lot owners used the property for recreational purposes for several years (some had even built docks), unaware that they were trespassing. The estate agreed to divide its property and sell the pieces to the lot owners. Pursuant to the Land Division Act,³ the estate filed an action for declaratory judgment and the lot owners filed a complaint seeking to "amend" the platted Detroit Beach No. 3 to include the estate's property and extend the lot owners' property to the water's edge.

Defendant owns property in Detroit Beach No. 3 that would not be affected by the amendment. He opposed the action, asserting that the lot owners' use of the estate's property would interfere with his use of Sandy Creek and obstruct his view of Lake Erie. Defendant sought summary disposition under MCR 2.116(C)(8), arguing that plaintiffs failed to state an actionable claim under the act. Defendant contended that plaintiffs were required to vacate the original plat before seeking a replat. Furthermore, defendant contended that there was no statutory section that allowed the court to "amend" the plat, only to "vacate, correct or revise." The trial court denied defendant's motion, finding that plaintiffs' action did seek to vacate the original plat and enter a revised replat. On the eve of trial, defendant asserted that plaintiffs had failed to join all necessary defendants pursuant to MCL 560.224a. The trial court allowed plaintiffs to add thirty-three additional defendants and the action proceeded to trial. The trial court subsequently granted plaintiffs' request to amend the platted Detroit Beach No. 3 as requested.

II. Legal Analysis

Defendant continues to assert that plaintiffs failed to join all necessary defendants and did not sufficiently set forth the reasons for the requested replat. Defendant also continues to

¹ A "replat" is "the process of changing, or the map or plat which changes, the boundaries of a recorded subdivision plat." MCL 560.102(u).

² Sandy Creek is a channel with access to Lake Erie.

³ MCL 560.101 *et seq.*

contend that plaintiffs improperly sought to “amend” the plat, rather than seeking to vacate the plat before requesting to correct or revise it. Pursuant to MCR 2.613(C), we review findings of fact in a bench trial for clear error and conclusions of law de novo.⁴ A factual finding is clearly erroneous if a review of the entire record leaves this Court with a definite and firm conviction that a mistake was made.⁵ We also review issues of statutory construction de novo.⁶

We reject defendant’s contention that plaintiffs failed to join all necessary defendants. Pursuant to MCL 560.224a, a party seeking to vacate, correct, or revise a plat must name as defendants, and serve process upon, “the owners of record title of each lot or parcel of land included in or located within 300 feet of the lands described in the petition,” the municipality, affected public utilities, and certain government officials.⁷ Plaintiffs’ original complaint listed numerous defendants required to be joined pursuant to § 224a. Plaintiffs’ amended complaint included thirty-three additional defendants who owned land within three hundred feet of the involved property. Process was served upon each of the added defendants.⁸ Although defendant continues to assert that plaintiffs failed to join all necessary land owners, he has not identified any party who was improperly omitted.

Defendant’s argument that plaintiffs did not set forth the “reasons for seeking the vacation, correction, or revision” of the plat in their complaint as required by MCL 560.223(b) is completely without merit. Plaintiffs’ complaint clearly indicated that the purpose of the plat amendment was to enable the lot owners to extend their property to the shore of Sandy Creek upon acquisition of the estate’s property.

Defendant argues that plaintiffs failed to state an actionable claim, as the complaint sought to “amend” the plat, rather than to “vacate, correct or revise” it. We disagree. A court “may . . . vacate, correct, or revise all or part of a recorded plat”⁹ in accordance with a complaint filed by a lot owner requesting such relief.¹⁰ Before the statute was amended in 1978, MCL 560.222 specifically identified the method by which a party may “amend” a plat.¹¹ Defendant

⁴ MCR 2.613(C); *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003).

⁵ *Alan Custom Homes, supra* at 513; *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

⁶ *Wood v Auto-Owners Ins Co*, 469 Mich 401, 403; 668 NW2d 353 (2003).

⁷ MCL 560.224a; *Martin v Beldean*, 469 Mich 541, 552; 677 NW2d 312 (2004).

⁸ MCR 2.102(A).

⁹ MCL 560.221.

¹⁰ MCL 560.222.

¹¹ Before the 1978 amendment, § 222 provided:

(1) To amend a recorded plat, the proprietor of the subdivision or any lot in the subdivision may apply to the appropriate circuit court.

contends that the Legislature abolished suits to “amend” a plat when it deleted that reference. However, § 222 was amended to correct contradictory language in the statute, not to eliminate actions to “amend” a plat.¹² It is clear that § 222 applies to any actions to alter a plat, including this action to “amend.”¹³

Furthermore, the trial court properly interpreted plaintiffs’ complaint as a request to vacate the original plat and adopt a replat reflecting the requested revisions. MCL 560.104 provides that “[a] replat of all or any part of a recorded subdivision plat may not be approved or recorded unless proper court action has been taken to vacate the original plat” The only method to seek the vacation of a plat is a lawsuit filed pursuant to the Land Division Act.¹⁴ Plaintiffs fully complied with § 104 by filing the current action.

Finally, defendant argues for the first time on appeal that the trial court improperly conditioned the replat on the sale of the estate’s property to the lot owners. Defendant contends that this condition violates MCL 560.106, which provides:

No approving authority or agency having the power to approve or reject plats shall condition approval upon compliance with, or base a rejection upon, any requirement other than those included in section 105.

However, the circuit court is not an “approving authority or agency.” Sections 105 and 106 only restrict the formal process of plat approval, which entails submitting a “preliminary plat” to the municipality’s governing body¹⁵ and to various state, county, and municipal authorities for review, approval or rejection.¹⁶ These entities are the “approving authorities and

(...continued)

(2) To vacate, correct, alter or revise a recorded plat or any part of it, the proprietor of a subdivision or any lot in a subdivision; the governing body of a municipality which considers it necessary or advisable in the interests of the welfare, health or safety of its citizens; 2/3 of the proprietors collectively, of lands in the subdivision, and who also own 2/3 by area of the lands may apply to the appropriate circuit court.

¹² *Nelson v Roscommon Co Rd Comm*, 117 Mich App 125, 130; 323 NW2d 621 (1982). See also House Legislative Analysis, SB 634, June 13, 1978.

¹³ See *Amb's v Kalamazoo Co Rd Comm*, 255 Mich App 637, 648 n 11; 662 NW2d 424 (2003).

¹⁴ *Martin, supra* at 542-543.

¹⁵ See MCL 560.111; MCL 560.112.

¹⁶ See MCL 560.113-MCL 560.119.

agencies” referred to in § 106.¹⁷ Accordingly, a circuit court is not subject to the limitations of § 106.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jessica R. Cooper

/s/ Kirsten Frank Kelly

¹⁷ See *Conlin v Scio Twp*, 262 Mich App 379, 386-387; 686 NW2d 16 (2004) (noting that, while a municipality has the power to reject proposed plats under § 112, under § 106 it may not condition approval on compliance with any requirements other than those mentioned in § 105); *Arrowhead Development Co v Livingston Co Rd Comm*, 413 Mich 505, 514; 322 NW2d 702 (1982) (noting that the county road commission qualifies as an “approving authority” and, therefore, is subject to § 106).